

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	20cr0088 (DLC)
	:	
-v-	:	<u>MEMORANDUM OPINION</u>
	:	<u>AND ORDER</u>
GABRIEL DIXON,	:	
	:	
Defendant.	:	
-----X	:	

DENISE COTE, District Judge:

On April 3, 2020, the defendant sought release on bail from the Metropolitan Detention Center ("MDC") pending his May 1, 2020 sentencing on account of the COVID-19 pandemic.¹ The Government opposes the defendant's release. The defendant's application for release on bail is denied.

On January 31, 2020, the defendant pleaded guilty to conspiring to distribute ten grams and more of mixtures and substances containing a detectable amount of carfentanil, an analogue of fentanyl, in violation of 21 U.S.C. §§ 846, 841(b)(1)(B). The defendant's conviction carries a mandatory minimum term of imprisonment of five years. The Government calculates his sentencing guidelines range as far higher, 188 months to 235 months' imprisonment.

¹ An Order rescheduling the defendant's May 1 sentencing is forthcoming from the Court.

In arguing for his release, the defendant relies on 18 U.S.C. § 3142(i), which authorizes courts, under certain circumstances, to permit the "temporary release" of a defendant awaiting trial. But, in this case, the defendant has already pleaded guilty and is awaiting sentencing, not trial. And because the defendant pleaded guilty to a crime under the Controlled Substances Act for which a maximum term of imprisonment of ten years or more is prescribed, it is Section 3143(a)(2) that governs.

Pursuant to Section 3143(a)(2), a Court "shall order" a defendant who "is awaiting imposition or execution of sentence[,] be detained" unless the Court finds that two conditions are met. 18 U.S.C § 3143(a)(2). First, the Court must find that "a substantial likelihood that a motion for acquittal or new trial will be granted[,] or "an attorney for the Government has recommended that no imprisonment be imposed." 18 U.S.C. § 3143(a)(2)(A)(i), (ii). Second, the Court also must find by "clear and convincing evidence that the person is not likely to flee or pose a danger to any person or the community." 18 U.S.C. § 3143(a)(2)(A)(iii). The defendant fails to meet the requirements for release set forth in this section and the defendant does not argue otherwise.

A defendant who cannot meet the requirements of Section 3142(a)(2) may still be released pursuant to Section 3145(c), which provides,


A person subject to detention pursuant to [the above-described Section] . . . , and who meets the conditions of release set forth in section 3143(a)(1) . . . , may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate."

18 U.S.C. 3145(c) (emphasis supplied). Section 3143(a)(1) provides that a defendant awaiting sentencing shall be detained "unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released." 18 U.S.C. 3143(a)(1).

The defendant also has failed to meet the requirements of Section 3145(c). There can be no dispute that the COVID-19 outbreak has imposed enormous strains upon all institutions, including correctional facilities. Nonetheless, the defendant has not provided clear and convincing evidence that his release into the community is not likely to pose a danger to the safety of any other person or the community. See 18 U.S.C. §

3143(a)(1). The defendant's request for release pending his sentencing, therefore, is denied.

Dated: New York, New York
April 7, 2020



DENISE COTE
United States District Judge